

EXHIBIT B



Nicholas Mesiti
Managing Partner
Nick.Mesiti@hrfmlaw.com

July 6, 2023

LevelUp Staff Inc.
300 Delaware Ave. Suite 210
Wilmington, Delaware 19801

Via Email: info@levelupstaff.com

Original Via U.S. First Class Mail

Re: Unauthorized Use of "LEVELUP" Trademark
Our File No.: 5509.035

Dear Sirs:

We represent LevelUp HCS, LLC ("HCS") in intellectual property matters. We are writing this letter because LevelUp Staff Inc ("Staff") is infringing upon HCS's protected trademarks for LEVELUP.

HCS is the owner of numerous common law and federal trademark rights including rights in the mark "LEVELUP" and variations thereto in association with employee recruitment and placement services and various human resources services. HCS has been using its "LEVELUP" marks since at least as early as 2016 and HCS owns numerous U.S. Trademark Registrations for its "LEVELUP" marks including, but not limited to, the following Registrations:

U.S. Registration No. 5,281,005 for the mark LEVELUP;
U.S. Registration No. 6,994,015 for the mark LEVELUP;
U.S. Registration No. 6,994,016 for the mark **levelup**;
U.S. Registration No. 6,161,178 for the mark LEVELUP HUMAN CAPITAL SOLUTIONS;
U.S. Registration No. 6,761,406 for the mark LEVELUP TALENT;
U.S. Registration No. 6,783,079 for the mark LEVELUP TALENT SOLUTIONS;

(collectively referred to herein as the "LEVELUP Trademarks")¹

¹ Copies of the listed Registrations are found in **Exhibit A**.

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It has recently come to HCS's attention that Staff has been doing business under the tradename LevelUp Staff. Staff has been using the "LEVELUP" mark as a trade name to identify its employee recruitment and other services, and as its website domain name as shown at <https://www.levelupstaff.com/>. See **Exhibit B**.

As a result of Staff's infringement of HCS's trademark, there exists a significant likelihood that consumers will become confused into believing that Staff is associated with, sponsored by and/or affiliated with our client. This unauthorized use of LEVELUP conflicts with our client's trademarks and, as such, Staff's actions are in violation of federal and state law, including but not limited to, trademark infringement pursuant to 15 U.S.C. § 1114, misappropriation, unfair competition and false designation of origin pursuant to 15 U.S.C. § 1125(a) and common law. In fact, there have been instances of actual confusion amongst customers and potential customers of HCS. This actual confusion severely damages the goodwill and reputation of HCS. And, any future infringement by Staff will result in willful infringement.

Through the years, HCS has invested a great deal of time and resources developing and protecting its intellectual property. HCS has a firm policy of guarding its intellectual property from unauthorized use and misappropriation. It has vigorously sought to protect its valuable intellectual property and, when necessary, has pursued legal action to achieve its goal.

In an attempt to resolve this issue amicably and avoid any further confusion in the future, we demand that Staff by **August 1, 2023**:

- (1) agree to cease and desist all use of the LEVELUP Trademarks, or any similar variations thereof, including in the website, as keywords or metatags in website source code, and as key word purchases with any search engines;
- (2) agree to refrain from using any mark that includes the words LEVELUP; and
- (3) provide in writing that you will comply with these demands.

We expect your response on or before **August 1, 2023**. If we do not hear from you by then, HCS shall consider pursuit of all means of legal recourse available to it including commencing an action for trademark infringement and/or false designation of origin. In addition, failure to cease use of LEVELUP, particularly in light of the actual confusion which has occurred, as explained above, will result in the willful infringement of the HCS trademarks. Such willful infringement is ground for HCS to recover Staff's profits, enhanced damages and attorney's fees.

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This letter is written without prejudice and expressly reserves, without limitation, all claims, counterclaims and defenses, whether at law or in equity.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

HESLIN ROTHENBERG FARLEY & MESITI P.C.

A handwritten signature in black ink, appearing to read 'NM', is written over a light gray rectangular background.

Nicholas Mesiti

NM/paw
Enclosures



Nicholas Mesiti
Managing Partner
Nick.Mesiti@hrfmlaw.com

August 21, 2023

Mr. Michael Ash
LevelUp Staff Inc.
300 Delaware Ave. Suite 210
Wilmington, Delaware 19801

Via Email: michael.ash@levelupstaff.com

Re: Continued Unauthorized Use of “LEVELUP” Trademark
Our File No.: 5509.035

Dear Mr. Ash:

We have reviewed and considered your communications to us with regard to LevelUp Staff Inc.’s (“Staff”) infringement of LevelUp HCS, LLC’s (“HCS”) registered and common law trademarks in LEVELUP. Despite your assertion that Staff’s use of LEVELUP is for different services than those offered by HCS, we do not find your arguments to be persuasive. Therefore, this is your **FINAL WARNING** to end this willful infringement.

You claim that Staff does not infringe upon HCS’s federally protected trademark rights because Staff’s “purchasing of ‘Media Advertisement & company branding’ on behalf of healthcare clients” services are dissimilar from HCS’s offered services. However, this assertion is flawed for several reasons. To start, the test for trademark infringement is not whether the two marks are for the exact same services, but whether they are confusingly similar. *See*, 15 U.S.C. § 1114(1)(a). Where two services “serve the same purpose, fall within the same general class, or are used together, the use of similar designations is more likely to cause confusion.” *Lang v. Ret. Living Pub. Co.*, 949 F.2d 576, 582 (2d Cir. 1991). Here, “media advertisement & company branding” services are highly similar and offered to the same types of consumers as HCS’s services, namely, recruitment services, placement services, consulting services for employers and companies, and employment counseling services.

Additionally, your claim that Staff only offers its services to “healthcare clients” does not obviate any likelihood of confusion. HCS’s services are not provided to a specific field of business, but rather are offered to all types of business, including those in the healthcare industry. There is clear overlap in the types of consumers solicited by both Staff and HCS, such that confusion is not just likely, but almost inevitable.

Further, Staff’s website does not support your claim that Staff only offers media advertisement and company branding services, as opposed to recruitment services. Staff’s website, at <https://levelupstaff.com/services>, lists its services as “Recruitment Advertising Services.” The services offered by Staff are confusingly similar to HCS’s employment

Mr. Michael Ash
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counseling and recruiting services. For example, Staff advertises “Job Board Management” services as follows:

Job Board Management

We help create and manage your online recruitment presence across multiple job boards and media platforms. Our team takes the time to learn about your recruiting challenges to provide you with a customized solution for job advertising success.

This is highly similar, if not identical, to business recruitment services. Staff is offering highly similar services to the same types of consumers as HCS, creating a likelihood of confusion.

Finally, we note that you have pointed out the use of “Level Up” by other companies for alleged recruitment-type services. HCS is aware of unauthorized third-party uses and is actively policing the use of its mark. However, HCS “is not bound to take on more than one infringer at a time.” *See, Cuban Cigar Brands N. V. v. Upmann Int’l, Inc.*, 457 F. Supp. 1090, 1098 fn. 28 (S.D.N.Y. 1978), *aff’d*, 607 F.2d 995 (2d Cir. 1979). The fact that others are also potentially infringing HCS’s protected trademarks does not alleviate Staff’s liability for infringement.

HCS cannot accept Staff’s continued use of its infringing mark. Therefore, we continue our demand that Staff immediately agree to end all unauthorized use of LEVELUP, or any similar variation thereof, and to not infringe HCS’s mark in the future. We further note that Staff’s continued usage of its infringing mark after being informed of its infringing nature is considered willful and is ground for HCS to recover Staff’s profits, enhanced damages and attorney’s fees should litigation be necessary.

We expect your response on or before **August 31, 2023**. If we do not hear from you by then, HCS shall consider pursuit of all means of legal recourse available to it including commencing an action for trademark infringement and/or false designation of origin.

This letter is written without prejudice and expressly reserves, without limitation, all claims, counterclaims and defenses, whether at law or in equity.

Very truly yours,

HESLIN ROTHENBERG FARLEY & MESITI P.C.



Nicholas Mesiti

NM/paw



Nicholas Mesiti
Managing Partner
Nick.Mesiti@hrfmlaw.com

October 10, 2023

Mr. Michael Ash
LevelUp Staff Inc.
300 Delaware Ave. Suite 210
Wilmington, Delaware 19801

Via Email: michael.ash@levelupstaff.com

Re: Continued Unauthorized Use of "LEVELUP" Trademark
Our File No.: 5509.035

Dear Mr. Ash:

We are again following up on our communications with regard to LevelUp Staff Inc.'s ("Staff") infringement of LevelUp HCS, LLC's ("HCS") registered and common law trademarks in LEVELUP. We appreciate your email to us on August 31 that you will "review what you mentioned with my attorney and circle back with you." However, we have not heard further from you since that email over one month ago. We, therefore, provide you with this **FINAL WARNING** to end this willful infringement.

Staff's efforts to evade its unauthorized and infringing use of HCS's "LEVELUP" trademark are ineffective and improper. A review of Staff's website (<https://levelupstaff.com>) reveals an apparent effort of rebranding to the name "Levels-Up Staff". See, for example:



However, the "Levels-Up Staff" mark still infringes upon HCS's protected trademark rights. Please note that the test for trademark infringement is not whether the two marks are identical, but whether they are confusingly similar. *See*, 15 U.S.C. § 1114(1)(a). The mere addition of an "s" and a hyphen in the name does not sufficiently differentiate Staff's marks from HCS's protected trademark. Rather, consumers are still likely to be confused in believing that some Staff's services are affiliated with and/or sponsored by HCS, when no such affiliation or sponsorship exists.

Mr. Michael Ash
LevelUp Staff Inc.
October 10, 2023
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Even with this apparent name change, Staff still uses “Level-Up” as a source identifier by using it in their slogans. See, for example:



<https://levelupstaff.com/>

Levels-Up Staff

Give your recruitment team a Level-Up!

<https://www.linkedin.com/company/levelupstaff/>

Such usage infringes upon HCS’s “LEVELUP” trademark, even when not used in the name of the company itself.

Further, HCS has become aware that Staff has applied for a U.S. Trademark for “LEVEL-UP STAFF” covering “Advertising and marketing services, namely, promoting the goods and services of others” in International Class 35. Such application shows Staff’s apparent intention to continue business under the “LEVEL-UP” trademark, and please note that HCS is monitoring this application.

Therefore, we demand that Staff immediately end all unauthorized use of LEVELUP, LEVEL-UP, LEVELS-UP, or any similar variation thereof. If we do not hear from you by **October 23, 2023**, we will be forced to commence legal proceedings against Staff to protect HCS’s rights against confusion. This is therefore the **final** opportunity for Staff to change their name before HCS commences legal action.

This letter is written without prejudice and expressly reserves, without limitation, all claims, counterclaims and defenses, whether at law or in equity.

Very truly yours,

HESLIN ROTHENBERG FARLEY & MESITI P.C.



Nicholas Mesiti

NM/paw



Nicholas Mesiti
Managing Partner
Nick.Mesiti@hrfmlaw.com

December 14, 2023

Mr. Michael Ash
LevelUp Staff Inc.
300 Delaware Ave. Suite 210
Wilmington, Delaware 19801

Via Email: michael.ash@levelupstaff.com

Re: Continued Unauthorized Use of “LEVELUP” Trademark
Our File No.: 5509.035

Dear Mr. Ash:

We are again following up on our communications with regard to LevelUp Staff Inc.’s (“Staff”) infringement of LevelUp HCS, LLC’s (“HCS”) registered and common law trademarks in LEVELUP. We appreciate your recent prior communications with us.

Staff’s efforts to avoid infringing use of HCS’s “LEVELUP” trademark are insufficient. Staff’s website (<https://levelupstaff.com>) reveals an apparent effort of rebranding to the name “Lever-Up Staff”. See, for example:



However, the “Lever Staff” mark still infringes upon HCS’s protected trademark rights. Please note that the test for trademark infringement is not whether the two marks are identical, but whether they are confusingly similar. *See*, 15 U.S.C. § 1114(1)(a). The mere change of one letter in the name does not sufficiently differentiate Staff’s marks from HCS’s protected trademark. Rather, consumers are still likely to be confused in believing that some Staff’s services are affiliated with and/or sponsored by HCS, when no such affiliation or sponsorship exists.

Even with this apparent name change, Staff still uses <https://levelupstaff.com/> As its domain name. This name must also be changed. Our client would be amenable to your use of “Leverage Up Staffing” or “Leverage Staffing”.

Mr. Michael Ash
LevelUp Staff Inc.
December 14, 2023
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Further, as indicated in our prior correspondence HCS has become aware that Staff has applied for a U.S. Trademark for “LEVEL-UP STAFF” covering “Advertising and marketing services, namely, promoting the goods and services of others” in International Class 35. And, HCS demands that you withdraw or abandon such application.

Therefore, HCS demands that Staff immediately end all unauthorized use of LEVELUP, LEVEL-UP, or LEVER-UP, or any similar variation thereof, and that it withdraw its pending trademark application.

If we do not hear from you by **January 2, 2024**, we will be forced to commence legal proceedings against Staff to protect HCS’s rights against confusion.

This letter is written without prejudice and expressly reserves, without limitation, all claims, counterclaims and defenses, whether at law or in equity.

Very truly yours,

HESLIN ROTHENBERG FARLEY & MESITI P.C.



Nicholas Mesiti

NM/paw